



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 2, 2004

Ms. Claudia G. Arrieta
Thornton, Summers, Biechlin, Dunham & Brown, L.C.
10100 Reunion Place, Suite 300
San Antonio, Texas 78216-4186

OR2004-2682

Dear Ms. Arrieta:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198676.

The Frio County Sheriff (the "sheriff"), whom you represent, received a request for five types of information relating to bail bonds and persons who have been released on bail on or after January 1, 2004. You inform us that the requestor has been asked to clarify part 3 of the request.¹ You do not indicate that the requestor has responded to the request for clarification. Accordingly, the sheriff has no further obligation to respond to part 3 of the request at this time.² However, should the sheriff receive clarification and seek to withhold any of the information to which the requestor seeks access, the sheriff must comply with section 552.301 of the Government Code in doing so. *See* Gov't Code §§ 552.301, .302. You also indicate that the sheriff has no information that is responsive to part 2 of the request. The Public Information Act, chapter 552 of the Government Code, does not require the sheriff to release information that did not exist when he received this request or to create responsive information.³ You inform us that the sheriff will release some of the information that is

¹See Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information).

²See Open Records Decision No. 663 at 2-5 (1999) (addressing circumstances under which governmental body's communications with requestor to clarify or narrow request will toll ten-business-day deadline to request decision under section 552.301(b)).

³See *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 452 at 3 (1986), 362 at 2 (1983).

responsive to the rest of this request. You claim that other responsive information is excepted from disclosure under sections 552.101, 552.102, and 552.108 of the Government Code. We also have considered the correspondence that we received from the requestor.⁴

Section 552.301 of the Government Code prescribes the procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

As of the date of this decision, this office has not received the information, or a representative sample of the information, that the sheriff seeks to withhold. Thus, the sheriff has not complied with section 552.301 in requesting this decision. Therefore, the information in question is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from the public. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). Section 552.108 of the Government Code is a discretionary exception to disclosure that the sheriff may waive. *See* Gov't Code § 552.007; Open Records Decision No. 177 (1977) (addressing statutory predecessor to Gov't Code § 552.108). In failing to comply with section 552.301, the sheriff has waived his claim under section 552.108.⁵ *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions); *but see* Open Records Decision No. 586 at 3 (1991) (need of another governmental body to withhold information under statutory predecessor to Gov't Code § 552.108 can provide compelling reason for non-

⁴*See* Gov't Code § 552.304 (any person may submit written comments stating why information at issue in request for attorney general decision should or should not be released).

⁵We note that the sheriff also failed to claim an exception to disclosure under section 552.108 within the ten-business-day period prescribed by section 552.301(b).

disclosure). You also assert that the sheriff must withhold any responsive information that is private or confidential under sections 552.101 or 552.102 of the Government Code. The applicability of either of these sections can provide a compelling reason for non-disclosure under section 552.302. However, you have not submitted any of the information that you claim is private or confidential, and thus we have no basis for concluding that there is any compelling reason to withhold any such information under sections 552.101 or 552.102. Therefore, we have no choice but to order you to release any other information that is responsive to parts 1, 4, or 5 of the present request, in accordance with section 552.302. If you believe that any such information is confidential and may not lawfully be released, you must challenge this ruling in court as outlined below.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

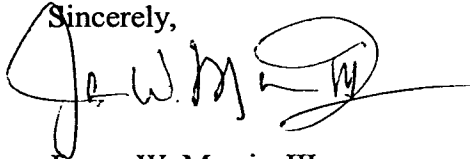
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. W. Morris, III', with a stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 198676

c: Mr. Robert Herrera Jr.
8519 Chimneyhill
San Antonio, Texas 78254